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June 7, 2004

**VIA HAND DELIVERY**

Honorable Deborah Taylor Tate, Chairman  
c/o Sharla Dillon, Docket & Records Manager  
Tennessee Regulatory Authority  
460 James Robertson Parkway  
Nashville, Tennessee, 37243-0505

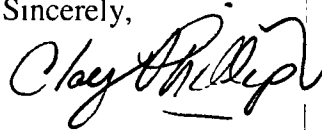
RE: Generic Docket Addressing Rural Universal Service,  
TRA Docket No 00-00523

Dear Chairman Tate:

On May 6, 2004, the Hearing Officer in the above-referenced docket issued *Order Granting in Part the Petition for Emergency Relief and Request for Standstill Order by the Tennessee Rural Independent Coalition* (the "Order"). On May 17, 2004, various Petitions seeking reconsideration of the Order were filed with the Authority. On May 24, 2004, the Authority directed interested parties to file briefs regarding the merits of the Order and further directed that such briefs be filed on June 7, 2004. Therefore, please find attached fourteen (14) copies of the CMRS Providers original Petition for Reconsideration, which we now wish to be treated as the brief requested. This document squarely addresses the rationales and merits behind seeking reconsideration of the Order.

If you have any questions about this filing or need any additional information, please do not hesitate to give me a call at (615) 744-8446.

Sincerely,



J. Barclay Phillips

clw  
Enclosure  
cc Parties of Record

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**IN RE:**

**GENERIC DOCKET ADDRESSING  
RURAL UNIVERSAL SERVICE**

**DOCKET NO.  
00-00523**

**CMRS PROVIDERS' PETITION FOR RECONSIDERATION**

Cellco Partnership d/b/a Verizon Wireless ("Verizon Wireless"); AT&T Wireless PCS, LLC d/b/a AT&T Wireless ("AT&T Wireless"); BellSouth Mobility LLC, BellSouth Personal Communications LLC and Chattanooga MSA Limited Partnership, collectively d/b/a Cingular Wireless ("Cingular Wireless"); Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS"); and T-Mobile USA, Inc. ("T-Mobile"), collectively referred to herein as the CMRS Providers, hereby submit this Petition for Reconsideration of the May 6, 2004 Order of the Hearing Officer (the "Order"), which requires BellSouth to pay the Rural Coalition Members ("Coalition") \$.03 per minute in interim compensation for CMRS-originated transited traffic from June 1, 2003 until the earliest of (1) a date established by the CMRS Carriers and the Coalition Members; (2) 30 days following the panel's deliberations in TRA Consolidated Docket No. 03-00585 (the arbitration docket); or (3) December 31, 2004.

**I.**

**INTRODUCTION**

The Order is inconsistent with the Communications Act of 1934 as amended by the Telecommunications Act of 1996 (the "Act"), and the regulations implementing the provisions of Sections 251 and 252. Specifically, the Order is in conflict with the regulations requiring ILECs to enter interim compensation arrangements during the

negotiation/arbitration process, subject to retroactive adjustment of the interim (symmetrical) rates based on the final rates approved as a result of the arbitration.<sup>1</sup>

The CMRS Providers agree that the Coalition Members are entitled to interim compensation from an originating CMRS Provider for traffic terminated on its network, *just as CMRS Providers are entitled to interim compensation from an originating Coalition Member for traffic terminated on the CMRS Provider's network.*<sup>2</sup> The Order, however, contradicts federal law by compelling the payment of non-cost based, non-reciprocal compensation from a carrier, BellSouth, which did not originate the traffic in dispute, nor request negotiations with the Coalition Members.

Although the Order may (or may not) be consistent with the "Interconnection Arrangements" identified in previous TRA orders, it is inconsistent with the reciprocal compensation mandate of Section 251 and the corresponding federal regulations. Compensation between carriers for the termination of Telecommunications Traffic is governed by federal, not state law.<sup>3</sup> As the United States Supreme Court has held, "[w]ith regard to the matters addressed by the 1996 Act," Congress "unquestionably" has "taken the regulation of local telecommunications competition away from the States" --

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<sup>1</sup> See C.F.R. § 51.715

<sup>2</sup> The CMRS Providers believe the issue of interim compensation is more appropriately addressed in TRA Consolidated Docket No. 03-00585 and that the Petition for Emergency Relief should accordingly be either denied without prejudice or stayed pending the resolution of the issue in Docket 03-00585. The CMRS Providers note that the issue of interim compensation has been briefed and is pending in the Arbitration Proceeding per the Hearing Officer's request. See CMRS Providers' Position on Interim Compensation filed March 3, 2004 in Docket No. 03-00585. The CMRS Providers further note that they have previously requested that the Coalition Members enter into an interim arrangement consistent with the regulations, but the Coalition Members have refused all such requests, and chose not to file a brief in Docket No. 03-00585 regarding the interim compensation issue.

<sup>3</sup> See C.F.R. § 51.701(a), (b)(2).

even as to the “intrastate service[s]” that previously lay within the State’s exclusive jurisdiction.<sup>4</sup>

The CMRS Providers and the Coalition Members originate and terminate traffic to and from each other. BellSouth is merely the intermediary (transiting) carrier. Moreover, since approximately the end of May/beginning of June, 2003, at the formal request of the CMRS Providers, the CMRS Providers and the Coalition Members have been engaged in the negotiation and arbitration process mandated by Section 252 of the Act. The FCC’s implementing regulations require that, during the negotiation/arbitration process, the incumbent LEC shall provide transport and termination service under an interim arrangement, at symmetrical cost-based rates.<sup>5</sup>

The Order, however, provides for compensation *only* to the Coalition Members at a rate, which, as referenced in the Order, is more than the Coalition Members are likely entitled to receive.<sup>6</sup> That this rate is not reciprocal, and thus leaves the CMRS Providers without compensation for terminating traffic from the Coalition Members, only highlights the irreconcilable inconsistencies between the Order and the Act. That BellSouth is required to pay the Coalition Members, as opposed to the Coalition Members and the CMRS Providers compensating one another, further underscores the problem.

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<sup>4</sup> *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 378-80 at n. 6 (1999). This is in addition to the FCC’s plenary jurisdiction over the regulation of *wireless* services, over which the states have very limited authority in the first instance. In fact, under this separate source of authority, the FCC has issued additional rules directly requiring ILECs to interconnect with wireless carriers and compensate them for the mutual exchange of traffic, and these expressly preempt any state law directives to the contrary. See 47 C.F.R. § 20.11.

<sup>5</sup> 47 C.F.R. § 51.715.

<sup>6</sup> See Order at pg. 18.

Accordingly, the CMRS Providers respectfully request that the Order be revised so that the CMRS Providers and the Coalition Members compensate one another for all Telecommunications Traffic exchanged by the parties (including but not limited to CMRS-originated transit traffic) delivered after May 31, 2004 at an *interim symmetrical rate* based on forward-looking costs and subject to true-up at the conclusion of Docket No. 03-00585. In that manner, and only in that manner, will *each party* be appropriately compensated for service provided during the interim period.

## II.

### ANALYSIS

#### **1. The Order Violates Federal Interim Reciprocal Compensation Requirements.**

The Act and implementing regulations contemplate the precise issue before the Commission; i.e., how to ensure that consumers enjoy the benefits of a competitive market when carriers negotiate interconnection agreements while at the same time providing that carriers are appropriately compensated during those negotiations.

In particular, 47 CFR Section 51.715 establishes detailed rules governing the exchange of traffic and compensation for that traffic on an interim basis during interconnection negotiations and/or arbitrations. Section 51.715 provides that upon request from a telecommunications carrier without an existing arrangement, an incumbent local exchange carrier ("ILEC") must provide transport and termination under an interim arrangement (47 CFR § 51.715(a)) which provides for compensation at symmetrical rates. 47 CFR § 51.715(b). The rule provides three options for the establishment of these interim rates: (i) rates established by the state commission based on forward-looking cost studies; (ii) default price ranges and ceilings established by the state commission consistent with 47 USC § 51.707; or (iii) default rates specified in 47

CFR § 51.715(b)(3) for switching and transport. 47 USC § 51.715(b). The rules provide that the interim rates are to be in effect until an agreement has been approved by the state commission (47 CFR § 51.715(c)), and that if the interim rates differ from the rates finally approved by the state commission, they shall be adjusted retroactively (the so-called “true-up” provisions). 47 CFR § 51.715(d).

The true-up provisions are particularly important in assuring that whatever interim option is selected, the originating and terminating parties will ultimately receive the appropriate forward-looking rate for traffic exchanged during negotiation/arbitration. Thus, if the TRA orders a higher compensation rate in the arbitration, both parties will receive the benefit of that higher rate during the interim period. Likewise, if the TRA orders a lower rate, or if it orders that the parties exchange traffic on a bill and keep basis, the parties will receive those benefits. *In other words, each party is completely protected by the true-up mechanism.*

The Order does not comply with any of the provisions of these federal regulations. First, the Order adopts rates that are *not* cost based and which will overcompensate the Coalition Members.<sup>7</sup> Second, the Order disregards the compensation due the CMRS Providers for terminating Coalition Members traffic during the interim period.<sup>8</sup> Third, the adopted rates are not subject to true up. Fourth and finally, the Order

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<sup>7</sup> It is difficult to imagine what incentive the Coalition Members would have to actively pursue the underlying arbitration given that the Order would overcompensate them and relieve them of any obligation to pay the CMRS Providers for terminating land-originated traffic as required by the Act

<sup>8</sup> Pursuant to 47 CFR § 51.703(a), the obligation to pay compensation for the termination of “Telecommunications Traffic” is reciprocal:

Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier

This means that the Rural Coalition Members are required to compensate the CMRS Providers for Coalition-originated Telecommunications Traffic that terminates on a CMRS Provider’s network. *See also*

requires a nonparty to the negotiation/arbitration, BellSouth, rather than the Requesting Carrier and ILEC, i.e., the CMRS Providers and the Coalition Members, to make the payments to each other.<sup>9</sup>

**2. The Order Should be Revised to Provide for Appropriate Interim Arrangements Between the CMRS Providers and the Coalition Members.**

**A. Appropriate Interim Rate**

Consistent with the provisions of Section 51.715, and the underlying regulatory goal of “recovering costs from the cost causer”, the Order should be modified to provide for the mutual and reciprocal compensation of Telecommunications Traffic (including but not limited to CMRS-originated transit traffic) at a rate consistent with any of the options set forth in Section 51.715(b). Because, however, the TRA has not established a cost-based interconnection rate for any Coalition Member, or otherwise established default price ranges and ceilings, and the status of the default rates provided for in the regulations are in question, none of the regulatory options appear to be available.

Given that none of the options provided for in the regulations seem to be readily available, the CMRS Providers suggest that a rate of 1.0 cent per minute, applied on a reciprocal basis during the interim period of negotiation/arbitration, would be an appropriate interim rate. The rate is not only in line with the rates that other carriers have

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Order Denying Motion of Coalition to Dismiss Arbitrations or alternatively add BellSouth as a Party, TRA Consolidated Docket No 03-00585, p. 7 (April 12, 2004) (Order Denying Motion) (“Based upon the bona fide requests to negotiate interconnection and reciprocal compensation agreements, the members of the Coalition are obligated to interconnect with each CMRS provider, whether directly or indirectly, and to establish with each CMRS Provider an arrangement for reciprocal compensation for the exchange of telecommunications traffic between a Coalition member and a CMRS provider.”)

<sup>9</sup> See also, Order Denying Motion, *id*

“Whether the exchange of traffic between two such carriers is direct or indirect via the BellSouth network, explicit in federal law is the duty of each Coalition member to each CMRS provider, as the requesting carrier, to arrange for reciprocal compensation. To this end, federal law imposes no compensation obligations on any third party, including BellSouth over whose network the traffic is being exchanged.”

negotiated in the context of ILEC/CMRS interconnection agreements, it is also consistent with the CMRS Providers' previous offer to enter into interim compensation arrangements with the Coalition Members.<sup>10</sup> Moreover, because of the true-up requirement, neither Coalition Members nor CMRS Providers will be injured if the final rates adopted in the arbitration are higher or lower. Clearly, however, the ordered rate of 3.0 cents per minute is inappropriate and highly unlikely to survive scrutiny, as the Order itself acknowledges.<sup>11</sup>

The CMRS Providers further propose that, as is the norm in many interconnection agreements, the interim arrangement include a traffic factor, which would assume that 65% of exchanged traffic is mobile-originated and 35% land-originated. This factor would also be subject to true up upon the conclusion of the arbitration.

#### **B. Bill and Keep**

Although Section 51.715 does not explicitly refer to bill and keep as a compensation option for interim arrangements the CMRS Providers suggest that the TRA might want to consider it in this instance, particularly in light of the absence of any traffic or cost data in the pending arbitration.<sup>12</sup> The CMRS Providers note that imposition of a bill-and-keep form of compensation does not mean that the Coalition Members go uncompensated during the interim period of arbitration. Rather, both the Coalition

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<sup>10</sup> Because the Coalition Members refuse to recognize their reciprocal obligation to compensate the CMRS Providers, the Coalition Members have steadfastly refused to enter any interim compensation arrangement at any rate.

<sup>11</sup> See Order at pp 17-18

<sup>12</sup> See 47 CFR § 51.713(b) which allows the TRA to impose bill-and-keep if the Telecommunications Traffic between the Coalition Members and the CMRS Providers is "roughly balanced." See also 47 CFR § 51.713(c) (allows the TRA to presume that traffic is "roughly balanced" unless and until "a party rebuts such a presumption")



Members and CMRS Providers receive compensation by the in-kind termination, at no charge, of each other's traffic.

Of course, if the Coalition Members present appropriate traffic and cost data in the arbitration, then the Coalition Members and the CMRS Providers would pay each other at the established rates for all traffic exchanged during the interim period, and neither party suffers injury. And if bill-and-keep is adopted as the final compensation mechanism, which would be the outcome if the Coalition Members do not produce appropriate data, no true-up would be required.

### **C. Reciprocity and True-Up**

At a minimum, the Order should be revised to require that the interim compensation arrangement be conformed to the results of the arbitration. As explained above, under federal law the interim compensation mechanism should be revised *now* to be cost-based, reciprocal and subject to true up. If the TRA declines to modify the terms of the ordered interim compensation arrangement (i.e., with BellSouth paying each Coalition Member 3.0 cents per minute effective June 1, 2003), the Order should, at a minimum, be modified to state that all payments made will be subject to the terms adopted in Docket No. 03-00585.<sup>13</sup>

The Order acknowledges that "it is appropriate to modify the Interconnection Arrangements with regard to CMRS traffic originated by a CMRS Provider with a meet-point billing arrangement with BellSouth and terminated to a Coalition end user."<sup>14</sup> How those arrangements will be structured in the future – including who will bear the payment

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<sup>13</sup> Or, in the unlikely case that the CMRS Providers and Coalition Members voluntarily agree to an interconnection agreement, to the terms of that agreement.

<sup>14</sup> See Order at p. 16

obligation and at what rate – will be decided in the arbitration. In that proceeding, unlike in this Rural Universal Service Docket, the TRA will be able to establish terms and rates with the benefit of a full record and an evidentiary hearing. Federal law dictates that when such terms and rates are adopted, they be applied retroactively to traffic exchanged during the interim arrangement period.<sup>15</sup> Thus, if the arbitration determines that the CMRS Providers and Coalition Members should compensate each other at a specific rate for each member, based on that Coalition Member's cost study, then the Coalition Members should refund the monies paid by BellSouth to BellSouth and the CMRS Providers and the Coalition Members should compensate each other on a reciprocal and symmetrical basis for traffic terminated on their respective networks at the established rate.

### III.

#### CONCLUSION

The current Order is fundamentally inconsistent with federal law that compensation be reciprocal. Further, the Order allows Coalition Members (1) to be compensated for terminating CMRS traffic at a rate that the Order itself admits is inflated, and (2) to avoid the Coalition's statutory obligation to compensate the CMRS Providers for terminating Coalition Member traffic.

Accordingly, the Order should be revised to eliminate BellSouth's obligation to pay the Coalition Members for CMRS transited traffic and instead impose an interim *reciprocal* compensation arrangement consistent with federal law. At a minimum, the Order should be revised to require that the terms of the interim arrangement be adjusted

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<sup>15</sup> 47 C.F.R. § 51.715(d)

to conform to the rates and payment obligations adopted in TRA Consolidated Docket  
03-00585.

Respectfully submitted on behalf of  
CMRS Providers,



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DATED: May 17, 2004

## CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2004, a true and correct copy of the foregoing has been served on the parties of record, via the method indicated:

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